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JUN 27 2006

OFFICE OF PETITIONS

In re Application of :
Kimble et al. : DECISION GRANTING
Application No. 09/775,692 : PETITION
Filed: 2 February, 2001 :
Atty Docket No. 50N3463.01 :

This is a decision on the renewed petition under 37 CFR 1.137(b),¹ filed on 18 May, 2006.

The petition is **GRANTED**.

The application became abandoned on 3 August, 2005, for failure to file a timely reply to the final Office action mailed on 2 May, 2005, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. The petition filed on 30

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

January, 2006, was dismissed on 21 March, 2006. Notice of Abandonment was mailed on 24 April, 2006.

Receipt of the response filed on 30 January, 2006, is acknowledged.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.² The three-month extension request filed on 17 May, 2006, was submitted more than five (5) months after the end of the period for reply to the Office communication mailed on 2 May, 2005, and therefore is unnecessary. The extension of time fee paid on 17 May, 2006, will be credited to counsel's deposit account as authorized.

The application is being referred to Technology Center Art Unit 2174 for further processing.

Telephone inquiries should be directed to the undersigned at 571-272-3231.



Douglas I. Wood
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Office of Petitions

² See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).